

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, SECOND JUDICIAL DEPARTMENT**

Azulay v. Malul

2021 NY Slip Op 02779 (N.Y. Ct. App. 2021) · No. 2018-11255 · Decided May 5, 2021

SUMMARY

The New York Appellate Division, Second Department, reversed a judgment awarding the plaintiff \$111,284.08 for breach of contract. The court held that the claim accrued when the alleged breach occurred in 2005 and was time-barred under the six-year statute of limitations in CPLR 213(2), directing dismissal of the complaint.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Robert J. Miller, J.; Valerie Brathwaite Nelson, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	May 5, 2021
DOCKET	2018-11255
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from a judgment entered after a jury verdict in favor of the plaintiff in a breach-of-contract action. The trial court denied defendants' CPLR 4401 motion for judgment as a matter of law at the close of plaintiff's case.
STANDARD OF REVIEW	The Appellate Division reviewed the denial of defendants' CPLR 4401 motion for judgment as a matter of law and determined that the evidence established the action was time-barred.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Shalom Malul and other defendants v. Ziv Azulay

TOPICS

breach of contract

motion for directed verdict

civil procedure

real estate

PRACTICE AREAS

contracts

real estate

civil procedure

QUESTIONS PRESENTED

1. Whether the trial court erred in denying defendants' CPLR 4401 motion for judgment as a matter of law where the evidence established that the alleged breach occurred more than six years before the action was commenced.

HOLDINGS

1. The action was time-barred because the alleged breach occurred in 2005 and the action was not commenced until 2014, more than six years later.
2. Defendants were entitled to judgment as a matter of law dismissing the complaint because the trial evidence established that the claim was barred by the statute of limitations.

KEY QUOTATIONS

*“A breach of contract cause of action accrues at the time of the breach, even though the injured party may not know of the existence of the wrong or injury” ([*1])*

FACTUAL BACKGROUND

The parties allegedly agreed to develop a parcel of real estate and sell it to a third party. The property was developed and sold in 2005, but plaintiff alleged that defendants failed to pay him money owed from the sale. Plaintiff commenced the breach-of-contract action in 2014.

PROCEDURAL HISTORY

The plaintiff sued in 2014 for damages allegedly owed under an agreement to develop and sell real estate. After a jury trial, the Supreme Court, Queens County, entered judgment for plaintiff in the principal amount of \$111,284.08. The Appellate Division reversed, granted defendants' CPLR 4401 motion, and dismissed the complaint as time-barred.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None; the defendants' CPLR 4401 motion was granted and the complaint was dismissed.

CASES CITED

- ACE Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v. DB Structured Prods., Inc., 25 N.Y.3d 581, 594
- Ely-Cruikshank Co. v. Bank of Montreal, 81 N.Y.2d 399, 402

OPINION

PER CURIAM.

Azulay v Malul (2021 NY Slip Op 02779) Azulay v Malul 2021 NY Slip Op 02779 Decided on May 5, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 5, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

ROBERT J. MILLER VALERIE BRATHWAITE NELSON LINDA CHRISTOPHER, JJ. 2018-11255 (Index No. 706158/14) [*1]Ziv Azulay, etc., respondent, vShalom Malul, etc., et al., appellants. Gordon & Haffner, LLP (Mauro Lilling Naparty LLP, Woodbury, NY [Anthony F. DeStefano], of counsel), for appellants. Kennedy Lillis Schmidt & English, New York, NY (John T. Lillis, Jr., of counsel), for respondent.

DECISION & ORDER In an action to recover damages for breach of contract, the defendants appeal from a judgment of the Supreme Court, Queens County (Carmen R. Velasquez, J.), entered July 25, 2018. The judgment, upon the denial of the defendants' motion pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint made at the close of the plaintiff's case, and upon a jury verdict, is in favor of the plaintiff and against the defendants in the principal sum of \$111,284.08.

ORDERED that the judgment is reversed, on the law, with costs, the defendants' motion pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint made at the close of the plaintiff's case is granted, and the complaint is dismissed.

The plaintiff and the defendants allegedly entered into an agreement to develop a parcel of real estate and then sell it to a third party. The property was developed and sold to a third party in 2005. In 2014, the plaintiff commenced the instant action against the defendants to recover damages for breach of contract, alleging that the defendants failed to give him the money he was owed from the sale.

The case proceeded to trial. At trial, at the close of the plaintiff's case, the defendants moved pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint on the ground that it was time-barred.

The Supreme Court erred in denying the defendants' motion pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint. The statute of limitations for a breach of contract cause of action is six years (see CPLR 213[2]). Generally, the statute of limitations begins to run when the cause of action accrues (see CPLR 203[a]). A breach of contract cause of action accrues at the time of the breach, even though the injured party may not know of the existence of the

wrong or injury (see ACE Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc., 25 NY3d 581, 594; Ely-Cruikshank Co. v Bank of Montreal, 81 NY2d 399, 402).

Here, the evidence at trial showed that the alleged breach of contract occurred in 2005. As this action was commenced more than six years later, the complaint is time-barred. RIVERA, J.P., MILLER, BRATHWAITE NELSON and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court